

Service Date: May 14, 2004

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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|---|---|------------------------|
| IN THE MATTER OF An Investigation |) | |
| of NorthWestern Energy's Financial and |) | UTILITY DIVISION |
| Related Transactions with NorthWestern |) | |
| Corporation, its Affiliates and Creditors |) | DOCKET NO. D2003.8.109 |
| That May Impair Its Financial Solvency |) | |
| and Public Utility Service Obligations |) | ORDER NO. 6505d |

ORDER TO FILE RESPONSES AND BRIEF

FINDINGS OF FACT

1. On January 6, 2004, the Montana Public Service Commission ("Commission") issued Order 6505c establishing procedural deadlines in this docket. On April 14, 2004, NorthWestern Energy, a division of NorthWestern Corporation ("NOR") filed a Motion for Extension of Time and Amendment of Procedural Deadlines. On April 15, 2004, the Commission, pursuant to authority delegated to its staff, issued a Notice of Staff Action granting NOR's motion and amending the procedural deadlines to those requested by NOR.

2. Pursuant to the revised procedural schedule, NOR was required to file responses to discovery on its answer testimony on or before May 7, 2004.

3. NOR failed to file its responses in a timely manner.

4. On February 19, 2004, the Montana Consumer Counsel ("MCC") filed Motion of the Montana Consumer Counsel to Compel Response to Data Request and for Order Establishing Procedures for Determination of Claims of Privilege and Immunity from Discovery ("Motion"). On March 1, 2004, the MCC and NorthWestern

Corporation (“NOR”) filed a joint Stipulation Between NorthWestern Corporation and the Montana Consumer Counsel (“Stipulation”). On March 4, 2004, the Commission issued a Notice of Commission Action approving the terms of the Stipulation. On March 31, 2004, NOR filed its response to the Motion (“Response”). On April 14, 2004, the MCC filed its Reply of the [MCC] to NorthWestern’s Response to Motion to Compel, and Request for Summary Ruling, or, in the alternative, Motion for Expedited Appointment to [sic] a Special Master. On April 19, 2004, NOR filed its Objection to Exercise of Summary Disposition of [MCC’s] Motion to Compel.

5. On April 27, 2004, at a regularly noticed work session the Commission, by a vote of 5 to 0, acted as follows:

- a. Appointed Martin Jacobson, Commission Staff Attorney, as Special Master to investigate and recommend to the Commission resolution of the dispute of law or fact relating to whether NOR is obligated to produce the specific documents withheld on the basis of claim of privilege or immunity otherwise responsive to data requests submitted by the MCC, including without limitation, MCC-002 of the First Discovery Request;
- b. Directed that on or before May 3, 2004, NOR provide the documents listed in Exhibit A to the Response, entitled Data Request MCC-002 Privilege Log (“Documents”) for *in camera* review by the Special Master;
- c. Directed that on or before May 3, 2004, NOR and the MCC file briefs, if desired, with the Special Master addressing the issues of

privilege, immunity from discovery, and confidentiality as they relate to the Documents; and

- d. Directed that on or before May 5, 2004, NOR and the MCC meet with the Special Master.

A Notice of Commission Action this action was issued on April 29, 2004.

6. On May 3, 2004, NOR filed an Objection to Appointment of Governmental Employee as Special Master.

7. NOR failed to file a brief addressing the issues of privilege, immunity from discovery, and confidentiality as they relate to the Documents.

CONCLUSIONS OF LAW

1. NOR is a public utility as defined in MCA § 69-3-101 (2003).
2. Pursuant to MCA § 69-3-102 (2003), NOR is subject to supervision, regulation, and control by the Commission.
3. The Commission has the power to adopt and publish reasonable and proper rules to govern its proceeding and to regulate the mode and manner of all investigations of public utilities. *See* MCA § 69-3-103 (2003).
4. Order 6505c, as amended by staff action, is a lawful order of the Commission which controls the timing of discovery in this proceeding. *See* ARM. § 38.2.2702(3).
5. The Notice of Commission Action directing NOR to file a brief on or before May 3, 2004, is a lawful order of the Commission.

6. NOR is in violation of MCA § 69-3-209 for both its failure to answer discovery requests and its failure to file a brief, and is subject to the penalty prescribed by MCA § 69-3-206 for each violation for each day it remains in violation.

ORDER

IT IS HEREBY ORDERED

1. NOR shall file its answers to Data Requests MCC – 005 through MCC – 009 on or before May 19, 2004; and

2. NOR shall file a brief addressing the issues of privilege, immunity from discovery, and confidentiality as they relate to the Documents on or before May 19, 2004.

DONE AND DATED this 11th day of May, 2004 by a vote of 5 – 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman

THOMAS J. SCHNEIDER, Vice Chairman

MATT BRAINARD, Commissioner

GREG JERGESON, Commissioner

JAY STOVALL, Commissioner

ATTEST:

Connie Jones
Commission Secretary